

REMARKS

Applicants have carefully considered the May 25, 2005 Office Action, and the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 10-12 and 16-20 are pending in this application.

In the previous amendment dated May 6, 2005, claim 10 was amended to recite the thickness of the nitride line; claim 20 was amended to change its dependency to claim 11 and to delete limitations recited in claim 10. Claim 16 was amended in accordance with the Examiner's suggestion.

During a telephone interview with examiner Vu on June 2, 2005, the Examiner indicated that the amendment submitted on May 6, 2005 would be entered. Moreover, Applicants are submitting a revised statement concerning common ownership. It is Applicants understanding that the present response, together with the Amendment dated May 6, 2005, will place the application in condition for allowance. Accordingly, entry of the present Remarks, and favorable consideration, are respectfully solicited pursuant to the provisions of 37 C.F.R. § 1.116.

Claims 10-12 were rejected under 35 U.S.C. § 102(e) as being anticipated over Ngo et al. (U.S. Pat. No. 6,521,529, hereinafter "Ngo"). Applicants respectfully traverse the rejection and rely on their remarks previously submitted on May 6, 2005. Accordingly, the rejection under 35 U.S.C. § 102(e) is not legally viable and should be withdrawn.

Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ngo in view of Yu (U.S. Pat. No. 6,506,650, hereinafter "Yu").

Claims 16-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ngo in view of Yu and further in view of Miles (U.S. Pat. No. 6,235,597, hereinafter "Miles").

Claim 20 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ngo in view of Ramaswami (U.S. Pat. No. 5,783,475, hereinafter "Ramaswami").

Applicants respectfully traverse each of the above rejections under 35 U.S.C. § 103(a). The prior art rejections under 35 U.S.C. § 103(a) are by way of 35 U.S.C. § 102(e) because Ngo was filed on October 5, 2000 and issued on February 18, 2003. The present application is a Divisional application of Serial No. 10/021,499, which was filed on December 19, 2001. Although Applicants disagree that the claimed invention is obvious predicated upon Ngo in view of any the above secondary and tertiary references, to expedite prosecution of the Application, Applicants submit that the reference to Ngo cannot be properly applied against the present Application under 35 U.S.C. § 103. As discussed in M.P.E.P. § 2146, a reference that qualifies as "prior art" only under 35 U.S.C. § 102(e) cannot be considered when determining whether an invention is obvious under 35 U.S.C. § 103, provided the prior art and the claimed invention were commonly owned at the time of the invention or subject to an obligation of assignment to the same person.

#### **EVIDENCE REQUIRED TO ESTABLISH COMMON OWNERSHIP**

As provided in the M.P.E.P. § 706.02(l)(2)(II), applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a

statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

The cover page of Ngo (U.S. Patent No. 6,521,529) indicates that the Patent was assigned to Advanced Micro Devices, Inc. of Sunnyvale, California. Applicants note that under M.P.E.P. § 706.02(l), common ownership at the time the later invention was made can be evidenced by referring to an assignment which is recorded in the Patent and Trademark Office in accordance with 37 C.F.R. Part 3. The Assignment of Application No. 10/021,499 (the parent of the present Divisional application) to Advanced Micro Devices, Inc. of Sunnyvale, California was recorded in the U.S. Patent and Trademark Office and the Assignment appears at Reel 012395, Frame 0944. A copy of the recorded assignment of Application No. 10/021,499 as well as for U.S. Patent No. 6,521,529 were submitted on May 6, 2005.

**Therefore, at the time the invention was made, the subject matter disclosed by Ngo and Applicants' present claimed invention were subject to an obligation of assignment to the same person, i.e., Advanced Micro Devices, Inc., of Sunnyvale, California.** As such, under 35 U.S.C. § 103(c), the reference to Ngo cannot be considered by the Examiner when determining whether Applicants' invention is obvious under 35 U.S.C. § 103. Furthermore, the remaining secondary and tertiary references, alone or in combination, fail to teach or fairly suggest every limitation of the claims. Accordingly, the rejections are not legally viable and the Examiner is requested to reconsider and withdraw the rejections of claims 16-18 and 20.

It is believed that pending claims 10-12 and 16-20 are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or

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an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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